

**DRAFT**  
**Minutes of the Delta Protection Commission Meeting**  
**Thursday, May 27, 1999**

1. **Call to Order/Attendance.** The meeting was called to order at 6:40 p.m. by Chairman Patrick N. McCarty. Commissioners present were: Broddrick, Cabaldon, Coglianese, Curry, Chairman McCarty, Matthews, Vice Chair Mello, Nottoli, Salmon, Sanders, Simas, and Thomson. Commissioners absent were: Brean, Calone, Canciamilla, Ferreira, Harris, McGowan, and Yates.
2. **Public Comments.** There were no public comments.
3. **Minutes of the March 25, 1999 Meeting.** Vice Chair Mello asked that the draft minutes be modified on page 6 to reflect his interest in increasing conveyance capacity, not increasing floodwaters. On a motion by Commissioner Matthews and a second by Commissioner Mello, the draft minutes, as amended, were approved by voice vote.
4. **Chairman's Report.** Chairman McCarty made some rearrangements to the agenda: Item #14 to be taken up after Item #12, and Item #13 to be last. Chairman McCarty welcomed two new Commissioners: representing the Department of Water Resources, Marci Coglianese, an attorney in private practice in Sacramento, a councilmember on the City of Rio Vista City Council, and Board Member of the Solano County Farmlands and Open Space Foundation; and Supervisor Ed Simas representing San Joaquin County Board of Supervisors. He said the next Delta Protection Commission meeting is scheduled for 6:30 p.m, Thursday, July 22, 1999 in the Jean Harvie Community Center in Walnut Grove.

Chairman McCarty said the packets included a resolution of appreciation for Bob Potter. On a motion by Commissioner Cabaldon and a second by Commissioner Curry, the resolution was approved by a voice vote. Chairman McCarty announced that the Delta Protection Commission has officially paid off its \$250,000 loan from the Environmental License Plate Fund as stated in the April 23, 1999 letter from Timothy Gage, Director of Finance to Senator Johnston. He thanked the members of the Budget, Finance, and Administration Subcommittee who helped make sure that the funds were reserved and then directed toward repayment of the loan.

Chairman McCarty said the CALFED grant-funded "Delta Dredging and Reuse Strategy Project" includes research and staff work prepared by staff of the Regional Board and Department of Fish and Game, which will be presented to a "Blue Ribbon" panel. The members of the "Blue Ribbon" will review the staffs' work and oversee the final product. The different agencies and groups to participate on the Panel are outlined in the Project Description which is part of the CALFED contract. There is a seat set aside for a Delta Protection Commissioner. He said three Commissioners had indicated interest in serving; he appointed Vice Chair Mello, with Commissioner Calone as his alternate.

Chairman McCarty noted that this is the sixth anniversary to the day that the Executive Director was hired; he thanked her for her service to the Commission.

5. **Commissioner Comments/Announcements.** Vice Chair Mello announced that Tyler Island has started a second dredging project; he said a new fish species has been listed as endangered which may affect the project. He said he had reviewed the most recent documents regarding Prospect Island. The documents state that the restoration project would increase the overall water supply; this is not correct, wetland areas consume more water than agriculture. He added that the issue of seepage is still being discussed. Finally, he raised a concern that later on, nearby landowners will be ordered to screen their intakes to protect critical fish species; the issue of who would pay in that situation needs to be addressed.

6. **Attorney General's Report.** Dan Siegel announced that Rick Frank has been promoted to the Head of the Public Rights Division, overseeing 200 employees. He noted that the U.S. Supreme Court had recently addressed the case of City of Monterey v. Del Monte Dunes, an inverse condemnation lawsuit; he said there will be no impact to the Delta Protection Commission, but one question raised was if a jury should hear the liability portion of a federal case, or a judge. The Court determined a jury should address liability, however, in California, judges hear such issues. In addition, he responded to a question raised at the last meeting whether a CEQA evaluation is needed where there is a potential loss of agricultural land; the answer is probably yes, if the land is prime and the loss would be a significant amount. Vice Chair Mello asked if that would apply to acquisition of land by a federal agency; Mr. Siegel said NEPA would probably apply, but not for acquisition, only for physical change which would result in loss of agricultural lands.

Chairman McCarty asked staff to send a note of congratulations to Rick Frank on behalf of the Commission.

7. **Executive Director's Report.** Ms Aramburu thanked everyone for the cake and kind words. She distributed the Executive Director's report, a new roster, and a copy of letter to DWR regarding Prospect Island.

Ms Aramburu said that all State agencies are required to have a strategic plan; the plan is then used to develop funding for State agencies. The strategic plan helps an agency ask four basic questions: Where are we now? Where do we want to be? How do we get there? and How do we measure our progress? Commissioner McGowan has been asked to help staff develop the strategic planning process which will include a workshop or retreat for the Commissioner. Staff has reviewed the adopted strategic plans for the six state agencies on the Commission and will meet with Commissioner McGowan on June 1 on this process.

Ms Aramburu said the San Joaquin County Habitat Conservation Plan has been refined, and should be released shortly for public review and comment. She reported on the Fish and Wildlife Service's Agricultural Waterfowl Incentive Program which provides funds to offset costs

of creating habitat for wintering and breeding waterfowl on agricultural lands. While Delta lands are eligible, the project manager said no Delta lands have received funds and will not likely receive funds unless the landowner has fish screens to eliminate entrainment of anadromous fish and species of concern such as splittail, salmon, and green sturgeon. The program funds have been distributed to rice farmers in the Sacramento Valley.

Ms Aramburu said the Water Education Foundation is sponsoring a Bay-Delta Tour on June 16-18. She said the Tuscany Research Institute awarded a one million dollar grant to Ducks Unlimited to expand scientific research of pintail migrations in relation to nesting patterns, response to changes in habitat and avian diseases. This is the largest research grant ever received by DU. Tuscany Research Institute owns several hundred acres on Mandeville Island which are managed for wildlife habitat and hunting. She reported that flows in the Delta waterways this summer will be normal, even though the snowpack is 150% of normal. Ms Aramburu asked for input from the Commissioners regarding the other seats on the Advisory Panel for the dredged material reuse study.

**8. Pending Projects Memo, Pending Category III Projects Memo, Legislative Update Memo.** Commissioner Salmon noted there are 11 projects that will add significant discharge into Delta Waterways, or will retire agricultural land. He expressed concern that the Delta is being stolen from in front of the Delta Protection Commission's eyes.

Commissioner Nottoli explained a proposed zoning change before the Sacramento County Board of Supervisors, is a combination aquaculture farm/waterski lake. He noted the project is on the edge of the Primary Zone and could end up before the Commission. Vice Chair Mello asked how you balance aquaculture and a waterski lake; Commissioner Nottoli said one partner owns a restaurant and says that it will work, while others are skeptical. Commissioner Nottoli said it is a problem because the County doesn't want to overregulate agriculture, but this is a unique combination project. Vice Chair Mello asked if there would be any issues associated with MTBE; Commissioner Nottoli said he doesn't know, however, there have been concerns raised about seepage because the pond was built largely above ground.

Ms Aramburu noted that the final environmental document for the Prospect Island habitat restoration project is due out in early June, which will preclude Commission consideration of comments. If that happens, she will prepare a letter of comment for review and approval by the Chair which addresses the issues outlined in the letter dated December 1, 1997, and issues such as the source of water supplies, screening of nearby intakes, and recreation.

**9. Consideration of Support for Assembly Member Machado's AB 1521; Funding for the Levee Subvention Program.** Chairman McCarty said the Commission will consider taking a position of support on the bill to provide \$50 million for the levee subvention program for the next two years.

Ms Aramburu said the Commission has not been active in legislative matters this year due to the directions of the Secretary of Resources to wait until the Governor's office has taken a position on legislation, however, independent boards cannot be precluded from taking a position on pending legislation. She noted that AB 1521 (Machado) would provide funds to continue the Levee Subvention program for the next two years, at \$25 million per year. The program has been enlarged to include project levees in the Primary Zone of the Delta, some levees in the Suisun Marsh, and the non-project levees. The funds also cover mitigation required as part of the program. It is believed that in two years, CALFED will have developed a long-term funding plan for the Levee Subventions program.

Commissioner Cabaldon asked the status of the bill in the Assembly Appropriations Committee; Ms Clamurro said it was in the suspense file. Commissioner Cabaldon said it was addressed on Wednesday and suggested it was unlikely to have been approved in its current form; staff had no further information.

Vice Chair Mello said AB 360 now requires a net gain in habitat (rather than no net loss of habitat), and asked for support of funding for the levee subvention program.

On a motion by Vice Chair Mello and a second by Commissioner Salmon, the motion was approved by a voice vote.

Commissioner Cabaldon added that SB 750 re: the City of Oakley was passed by the Senate.

**10. Consideration of Expenditures from the FY 98-99 Budget.** Chairman McCarty said the Commission will consider taking a position of approval for expenditure of funds from the FY 98-99 budget for: two computers to replace three computers that failed the Y2K compliance tests; a new copy machine; and miscellaneous office furniture. Total funds to be spent will not exceed \$18,000. He added that the Budget and Finance Subcommittee had recommended these expenditures. On a motion by Commissioner Salmon and a second by Commissioner Simas, the motion was approved unanimously by voice vote. Ms Aramburu thanked San Joaquin County for its generous donation of \$50,000 in 1993 which was used to buy all the office machines and equipment when the Commission opened its office.

**11. Consideration of FY 99-00 Budget and Work Plan.** Ms Aramburu said the Budget Committee reviewed the proposed budget and work plan and the Budget and Finance Subcommittee had recommended approval (Commissioner Calone did not support a new contract with Teale). The level of spending will remain the same; the sources of funding include funds from two special funds, and in addition, Commission staff will be able to bill for staff time associated with administration of the CALFED-funded Dredge Material Reuse Study. Staff has distributed a supplemental memo with more information about this year's and last year's budgets, and a memo which includes more information about the proposed Teale contract. The Commission has adequate funds to support a third permanent position, rather than a temporary

position, and to contract with Teale for their services. She noted that Commissioner Sanders would assist in oversight of Teale's work. She said the work plan is very similar to last year's work plan; new topics have been added in italics. However, there may be changes to the work plan when the Commission prepares and adopts a strategic plan.

On a motion by Commissioner Nottoli and a second by Vice Chair Mello, the budget and work plan were approved by voice vote.

**12. Briefing on Acquisition of Lands and Conservation Easements Since 1993.** Ms Aramburu reviewed the memo in the packet and a map. The memo has three sections: first, the memo shows land in public and nonprofit ownership as of January 1, 1993; second, lands acquired by public agencies and nonprofits in the last six years; and third, some of the conservation easements in the Delta.

Commissioner Salmon noted that DWR has not been able to solve the water quality problems they have created in the South Delta, yet have funds to acquire lands in the Delta.

Chairman McCarty said its important to see this information summarized in one document. He said the change in the last six years is what the Commission feared, and noted the rate of acquisition may accelerate in the future particularly when CALFED is funded. He suggested that the Commission should continue to work on seeking balance in the Delta to allow agriculture and recreation to continue, as wildlife habitat is being restored. He asked that the staff update the list regularly and keep the Commission informed as to new acquisitions.

Commissioner Salmon said this is important information for the Commission to track.

**14. Briefing on "Super Williamson Act".** Chairman McCarty welcomed John Gamper of California Farm Bureau Federation and Stephen Oliva, Staff Counsel with the Department of Conservation, for a briefing on SB 1182 (Costa), the "Super Williamson Act".

John Gamper said agricultural land is under intense pressure due to population growth in the State. He said in 1995 the Ag Task Force was created to discuss land-use policies to address the State's future growth. The program is an incentive based program to help landowners and local governments address land use issues associated with growth. The State responded by passing SB 1182 which would help landowners keep their land in agriculture through conservation easements. The legislation passed without one no vote. The Farmland Security Zone has been reviewed by the Attorney General and found to be valid.

Mr. Gamper pointed out the shortcomings of the Williamson Act: the ten year agreement is not long enough; most land under contracts is non-prime and far from urbanizing areas; and high value crops are not receiving benefits. He said many cities annex lands under contract and then make findings for cancellation of the contracts. Many schools have purchased agricultural land for new schools.

Mr. Gamper said the new law has 20 year contracts; eligibility limited to prime farm land, land of local significance, unique, and statewide significance; voluntary program county-by-county; no cancellation; additional 35% off property taxes (Prop 13 or Williamson Act value, whichever is lower); no annexation into cities or urban services districts; and no school facilities or acquisition or use of eminent domain.

Mr. Gamper distributed a report on the fiscal impacts of the program to Counties and a draft resolution for Counties to consider. To date, Monterey is in the program and Fresno County is considering entering the program. He suggested the Commission may want to consider a resolution of support of the Farmland Security Zone program.

Commissioner Salmon asked about conservation easements; Mr. Gamper said agricultural conservation easements are important tools; the FSZ contracts are for 20 years and are somewhere between a Williamson Act contract and a conservation easement in which is in perpetuity. He discussed habitat conservation easements and noted that habitat easements do not always protect agricultural use of lands although they do serve to keep land in private ownership.

Commissioner Simas asked about churches; Mr. Gamper said churches are often quite large and operate seven days a week. He suggested that local governments need to provide adequate sites for churches in the general plans. Churches are not prohibited under the FSZ program as are schools.

Vice Chair Mello asked about "safe harbor" for lands near habitat areas; Mr. Gamper said Farm Bureau is very involved in that issue, but it is not addressed in the FSZ program.

Commissioner Broddrick said State laws and regulations would not address federal endangered species issues.

Vice Chair Mello asked if the 20 year contracts would automatically extend; Mr. Gamper said yes.

Commissioner Nottoli asked if the 237,000 acres of Sacramento County land identified as potentially eligible for the program includes grazing land in eastern Sacramento County; Mr. Gamper said no, it does not apply to non-prime grazing land. However, if the grazing land is designated farmland of local importance it could be eligible. Commissioner Nottoli said that area is under great pressure to be developed. Mr. Gamper said the fiscal benefits for grazing land are not great.

Commissioner Thomson said the land in agriculture in Solano County is increasing; the Board did not support the bill because it did not go far enough to protect agricultural land which is located in the sphere of influence of a city; the most vulnerable agricultural lands. He asked why those areas were not protected. Mr. Gamper said those are lands which are planned for development in an approximately 20 year window. He said the building industry wanted to

include such areas as a benefit for developers. He said he hopes Solano County reconsiders and joins the program; Commissioner Thomson asked Mr. Gamper to come to the Board and make a presentation. Commissioner Thomson asked if there is a protest provision in the Williamson Act where cities can protest a proposed contract; Mr. Gamper said the protest provision was repealed in 1990.

Commissioner Coglianese asked how the FSZ program interacts with the Agricultural Land Stewardship Program; Mr. Gamper said it provides a middle ground between the ten year contract and a forever conservation easement. She asked if one landowner can take advantage of both programs; Mr. Oliva said it is unlikely that one landowner could take advantage of both programs unless it is a strategic parcel.

Commissioner Broddrick noted that Mike Chrisman who worked on the Ag Task Force is also a Fish and Game Commissioner and has brought a unique perspective on protecting agricultural lands along with habitat values. He said these ideas can work.

**13. Briefing on CALFED Category III Grant Applications (April 16, 1999).** Chairman McCarty said CALFED now requires grant applicants to notify the Delta Protection Commission of grant applications for projects in the Delta. Staff has prepared a list of the projects submitted for funding in the April 16, 1999 grant cycle. Projects will be reviewed by Technical Panels and an Integration Panel convened by CALFED, with final approval by the CALFED Policy Group in June.

Vice Chair Mello asked the cost of the project to acquire water rights from the old sugar beet facility for Stone Lakes Wildlife Refuge; Ms Aramburu said that information was not included in the letter. Vice Chair Mello asked staff to get that information when it is available.

**15. Briefing on Detailed Socio-Economic Analysis of the Proposed U.S. Fish and Wildlife Service North Delta National Wildlife Refuge.** NOTE: This item was postponed to the July 22 meeting, at the request of the U.S. Fish and Wildlife Service.

**16. Adjournment.** The meeting was adjourned at 8:30 p.m.

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